

R590. Insurance, Administration. Effective 6-16-98**R590-128. Unfair Discrimination Based on the Failure to Maintain Automobile Insurance. (Revised.)****R590-128-1. Authority.**

This rule is promulgated pursuant to Section 31A-23-302(3), which provides guidelines for determining what is unfair discrimination, and Section 31A-23-302(8), which allows the commissioner to make rules defining unfair marketing acts or practices.

R590-128-2. Purpose.

The purpose of this rule is to identify certain practices which the commissioner finds are unfair and discriminatory.

R590-128-3. Scope and Applicability.

This rule applies to all automobile insurance contracts delivered or issued for delivery in this state on or after the effective date of this rule.

R590-128-4. Rule.

(1) The following are hereby identified as acts or practices which, when applied because of failure to maintain automobile insurance for a period of time prior to the issuance of an insurance policy, constitute unfair discrimination among members of the same class:

- (a) refusing to insure or refusing to continue to insure;
- (b) limiting the amount, extent or kinds of coverage available;
- (c) charging applicants different rates for the same coverage by either surcharging one applicant who did not have prior insurance or crediting another applicant who did have prior insurance; or
- (d) designating the applicant as a non-standard, sub-standard, or otherwise worse than average risk for the purpose of placing the applicant in a specific company or rating tier.

(2) In the application of Subsection (1) the following shall apply:

- (a) an insurer may reject or surcharge an applicant if the insurer can demonstrate through driving records or other objective means including, but not limited to, a statement from the applicant, that the applicant has at any time in the immediately prior three years been operating a motor vehicle in violation of any state's compulsory auto insurance laws; or
- b) an insurer may reject or surcharge an applicant if the applicant represents that prior insurance existed, but fails to provide evidence to the insurer, or fails to assist the insurer in securing evidence that said prior insurance actually existed.

(3) Inadvertent lapses in coverage of up to 30 days due to the applicant's reasonable reliance on information from an insurance agent or company that the applicant was insured are not considered to be a failure to maintain automobile insurance for the purposes of this rule.

R590-128-5. Penalties.

Violations of this rule are punishable pursuant to Section 31A-2-308.

KEY: insurance companies

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